No. 127666

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Appellate Court of Illinois,
	)	Third Judicial District,
Plaintiff-Appellant,	)	No. 3-20-0181
	)	
	)	There on Appeal from the Circuit
v.	)	Court for the 21st Judicial Circuit,
	)	Kankakee County, Illinois
	)	No. 09-CF-426
MICHAEL WILSON	)	
	)	The Honorable
	)	Kathy Bradshaw-Elliott,
Defendant-Appellee.	)	Judge Presiding

BRIEF OF *AMICI CURIAE* CHILDREN AND FAMILY JUSTICE CENTER AND JUVENILE LAW CENTER IN SUPPORT OF DEFENDANT-APPELLEE

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IDENTITY AND INTEREST OF AMICI CURIAE

The **Children and Family Justice Center** (CFJC), part of Northwestern Pritzker School of Law's Bluhm Legal Clinic, was established in 1992 as a legal service provider for children, youth, and families, as well as a research and policy center, dedicated to teaching and training law students. Currently, clinical faculty and staff at the CFJC provide advocacy on policy issues affecting children in the legal system, and legal representation for children, including in the areas of juvenile delinquency, criminal justice, special education, school suspension and expulsion, and immigration and political asylum. In its 30-year history, the CFJC has served as *amici* in numerous state and United States Supreme Court cases based on its expertise in the representation of children in the legal system.

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential amicus briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

SUMMARY OF ARGUMENT

Michael Wilson was 14 years old when he participated in an armed robbery that resulted in the death of Ryan Graefnitz. Despite a jury's finding that he did not personally discharge the weapon that caused Graefnitz's death, Michael was found accountable for the co-defendant's actions and was sentenced to a *de facto* life sentence of 59 years. The Third District Appellate Court held that the sentencing court failed to properly take into account youth and its attendant characteristics, in mitigation, as required by the United States Supreme Court's decision in *Miller v. Alabama* and this Court's decision in *People v. Buffer*. *People v. Wilson*, 2021 IL App (3d) 200181-U, ¶ 16. The sentencing court further failed to consider the individual circumstances surrounding Michael's involvement in the offense, including that he had cognitive deficits and functioned at the level of a child in the second grade.

A lifetime in prison is a grave matter, reserved for only the rarest of cases involving young people. *Miller v. Alabama*, 567 U.S. 460, 479-80 (2012). The imposition of such a sentence on a youth convicted under a theory of accountability is particularly egregious and contravenes now well-established findings in adolescent development, especially where a youth might be uniquely vulnerable due to cognitive delays and developmental deficits. It is constitutionally disproportionate to impose a *de facto* life sentence on a youth, such as Michael, who was 14 years old, who has significant IQ and cognitive deficiencies, and who did *not* personally discharge a firearm but was convicted based on accountability for the actions of an older co-defendant.

Moreover, this Court should decline the State's invitation to upend this Court's own precedent in light of *Jones v. Mississippi*. This Court's seminal cases applying *Miller* have

faithfully and compassionately followed the dictates of the Eighth Amendment to ensure that *Miller*'s holding and reasoning is fully effectuated in Illinois. Furthermore, *Jones* does not require such a radical upheaval of settled precedent. Rather, the *Jones* Court expressly invited States to determine their own procedures that embody the spirit and constitutional principles of *Miller. Jones v. Mississippi*, 141 S. Ct. 1307, 1323 (2021). This Court has already done so. Thus, this Court should affirm the appellate court's decision in this case.

ARGUMENT

I. IMPOSING LIFE SENTENCES ON YOUTH FOR ACTS COMMITTED UNDER AN ACCOUNTABILITY THEORY CONTRAVENES ADOLESCENT DEVELOPMENT RESEARCH AND THE EIGHTH AMENDMENT

The Eighth Amendment forbids imposing life without parole sentences on youth "who do not kill, intend to kill, or foresee that life will be taken." *Graham v. Florida*, 560 U.S. 48, 69 (2010). A jury found that Michael Wilson *did not* personally discharge the weapon that caused Ryan Graefnitz's death. *People v. Wilson*, 2015 IL App (3d) 130606-U, ¶32. Yet, he received a *de facto* life without parole sentence because he was held accountable for another person's actions. *Id.* at ¶¶ 43-47. The use of the harshest available penalty on a young person convicted under an accountability theory violates the Eighth Amendment and ignores established scientific findings recognized by this Court and the United States Supreme Court, including adolescents' inability to appreciate the long-term consequences of their actions and their heightened susceptibility to peer pressure. *See infra* Sections I.A & I.B. This is particularly true in the instant case where Michael was found to be functioning developmentally at a second-grade level. *Wilson*, 2015 IL App (3d) 130606-U, ¶ 9.

A. Life Sentences Are Unconstitutionally Disproportionate For Young People Convicted Under An Accountability Theory

It is inconsistent with the logic of *Graham* and *Miller* to sentence a young person who is not principally responsible for murder to life without the possibility of parole. *Graham*, 560 U.S. at 59 ("Embodied in the Constitution's ban on cruel and unusual punishments is the 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense.'" (alteration in original) (citing *Weems v. United States*, 217 U.S. 349, 367 (1910))). In establishing that life without parole sentences are unconstitutionally disproportionate for young non-homicide offenders, the *Graham* Court reasoned that youth "who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers." *Id*. at 69. The Court noted, "when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability." *Id.* Similarly, *Miller* emphasized that given youth's "diminished culpability," life without parole sentences are rarely appropriate. *Miller v. Alabama,* 567 U.S. 460, 479 (2012). Simply put, an accomplice should never be categorized as one of the "uncommon" or "rare," most culpable youth for whom a life without parole sentence would be proportionate or appropriate. *Id.*

Despite this legal precedent, in Illinois, any person—even a 14-year-old like Michael—may be held accountable for the acts of another if that person, with intent to promote or facilitate the offense, solicits, aids, abets, agrees or attempts to aid in the planning or commission of the offense. 720 ILCS 5/5-2(c) (West 1962). This statute allows young people to be convicted of murder without directly causing the death of another. This Court has previously distinguished between adult and juvenile offenders convicted of murder under a theory of accountability. *See People v. Miller*, 202 Ill. 2d 328, 339-43

(2002). Finding the multiple-murder sentencing statute disproportionate under the Illinois Constitution for a youth convicted based on a theory of accountability, this Court noted that the case "does not only concern the sentence of a juvenile," but specifically "concerns the sentence of a juvenile convicted under a theory of accountability." *Id*. at 342. The Court recognized that, "as with juvenile offenders, courts in some cases may grant leniency in sentencing to offenders guilty by accountability." *Id.* The Court further reasoned that the degree of participation in a crime should be reflected in the ways individuals are sentenced if convicted by accountability or as a principal offender. *Id*.

In its opinion, this Court also cited the sentencing judge's reasoning at length. *Id.* at 331-32. The sentencing judge stated:

> I have from the moment that the Jury came back with their findings been very concerned about what this meant, what this meant to [defendant] as a 15–year–old child, what this meant to society at large, to be part of a society where a 15–year–old child on a theory of accountability only, passive accountability, would suffer a sentence of life in the Penitentiary without the possibility of parole. * * * I feel that it is clear that in my mind this is blatantly unfair and highly unconscionable . . . .

Id. (first and second alterations in original). Since this ruling in 2002, even more neuroscientific evidence and legal precedent establishes that sentencing a young person to life without parole on an accountability theory is blatantly unfair and highly unconscionable. *See Graham*, 560 U.S. at 68; *Miller*, 567 U.S. at 471-72; *see infra* Section I.B. While Illinois courts did not subsequently invalidate all life sentences for young people, *see People v. Davis*, 2014 IL 115595, ¶¶ 46-50; *People v. Davis*, 388 Ill. App. 3d. 869, 876-77 (2009) (finding *Graham* did not apply to a young person convicted of first-degree murder on what *may* have been a theory of accountability), this case presents an opportunity to reaffirm that young people convicted of murder under an accountability

theory are even less culpable and therefore less deserving of the harshest punishment.

B. Sentencing Youth To Life In Prison On An Accountability Theory Defies Adolescent Brain Development Research

The imposition of the harshest possible penalty on a young person ignores established behavioral and neuroscience research that is foundational to *Graham* and *Miller*. In particular, the Supreme Court has focused on three essential characteristics of adolescents that differentiate youth from adults and diminish their culpability: their lack of maturity leading to "recklessness, impulsivity, and heedless risk-taking," increased vulnerability to outside pressure, and character that is "not as 'well formed'" as that of an adult. *Miller*, 567 U.S. at 471 (first citing and then quoting *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005)); *see also Graham*, 560 U.S. at 68. These unique characteristics and corresponding research are particularly instructive when applied to youth who never directly caused the death of another in the context of accountability convictions; youth are often unable to foresee the consequences of their actions and are, by definition, acting with another person who may influence their decisions.

1. Adolescents are more likely to engage in risky behaviors and less likely to appreciate potential long-term consequences.

What is reasonably foreseeable to an adult is likely not reasonably foreseeable to a child. *See J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011) ("Indeed, even where a 'reasonable person' standard otherwise applies, the common law has reflected the reality that children are not adults."); *see also* Marsha L. Levick & Elizabeth-Ann Tierney, *The United States Supreme Court Adopts A Reasonable Juvenile Standard in J.D.B. v. North Carolina for Purposes of the Miranda Custody Analysis: Can A More Reasoned Justice System for Juveniles Be Far Behind?*, 47 Harv. C.R.-C.L. L. Rev. 501, 506 (2012) ("The

qualities that characterize the reasonable person throughout the common law—attention, prudence, knowledge, intelligence, and judgment—are precisely those that society fails to ascribe to minors . . . ."). As adolescents who participate in crimes are less likely to foresee or account for the possibility that someone may get killed in the course of that crime, their participation cannot be presumed to reflect a malicious intent to kill.

Adolescents' risk assessment and decision-making capacities differ from those of adults in ways that are particularly relevant to accountability cases. Emily C. Keller, *Constitutional Sentences for Juveniles Convicted of Felony Murder in the Wake of Roper, Graham & J.D.B.*, 11 Conn. Pub. Int. L.J. 297, 312-16 (2012). The United States Supreme Court has observed that adolescents "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *J.D.B.*, 564 U.S. at 272 (quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979)); *see also* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 Future Child. 15, 20 (2008) ("Considerable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices."). Although adolescents have the capacity to reason logically, they "are likely less capable than adults are in *using* these capacities in making real-world choices, partly because of lack of experience and partly because teens are less efficient than adults at processing information." Scott & Steinberg, *supra*, at 20. Because adolescents are less likely to perceive potential risks, they are less risk-averse than adults. *Id*. at 21.

Additionally, because adolescents attach different values to rewards than adults do, they often exhibit sensation-seeking characteristics that reflect their need to seek "varied, novel, [and] complex . . . experiences [as well as a] willingness to take physical, social,

legal, and financial risks for the sake of such experience." Marvin Zuckerman, *Behavioral Expressions and Biosocial Bases of Sensation Seeking* 27 (1994) (emphasis omitted). The need for this type of stimulation often leads adolescents to engage in risky behaviors, and as they have difficulty suppressing action toward emotional stimulus, they often display a lack of self-control. Scott & Steinberg, *supra*, at 20-22. The United States Supreme Court has recognized this, stating that adolescents "have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking." *Miller*, 567 U.S. at 471 (quoting *Roper*, 543 U.S. at 569). As a result, it is not surprising that "adolescents are overrepresented statistically in virtually every category of reckless behavior." *Roper*, 543 U.S. at 569 (quoting Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Rev. 339, 339 (1992)).

Finally, and perhaps most relevant in the context of accountability convictions, adolescents have difficulty thinking realistically about what may occur in the future. *See* Brief for the American Psychological Ass'n et al. as *Amici Curiae* Supporting Petitioners at 11-12, *Graham v. Florida*, 560 U.S. 48 (2010) (Nos. 08-7412, 08-7621). This lack of future orientation means that adolescents are both less likely to think about potential long-term consequences, and more likely to assign less weight to those that they *have* identified, especially when faced with the prospect of short-term rewards. Scott & Steinberg, *supra*, at 20; *see also Graham,* 560 U.S. at 78. These differences often cause adolescents to make different calculations than adults when they participate in criminal conduct.

2. Adolescents are more susceptible to negative influences.

The United States Supreme Court has recognized that youth are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure" than adults. *Roper*, 543 U.S. at 569 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). This characteristic is significant in all accountability cases—which definitionally require the participation of multiple people—but is particularly relevant in cases like Michael's that involve a teenage co-defendant. (Br. & App. of Resp't-Appellant People of the State of Ill. at 3). As "[m]id-adolescence is marked by decreased dependency on parental influence and increased dependency on peer influence," an adolescent's decision to participate in a crime is more often driven by fear of ostracism than rational thinking. Alison Burton, *A Commonsense Conclusion: Creating A Juvenile Carve Out to the Massachusetts Felony Murder Rule*, 52 Harv. C.R.-C.L. L. Rev. 169, 186-87 (2017) (citing Laurence Steinberg & Susan B. Silverberg, *The Vicissitudes of Autonomy in Early Adolescence,* 57 Child Dev. 841, 848 (1986)). When adolescents are pressured by their peers to participate in a criminal act, they may do so out of a misplaced concern about fitting in, even if they do not condone or want to participate in the criminal activity. *Id.* (first citing David Matza, *Delinquency and Drift* 57 (1964); and then citing Jacob T.N. Young & Frank Weerman, *Delinquency as a Consequence of Misperception: Overestimation of Friends' Delinquent Behavior and Mechanisms of Social Influence,* 60 SOC. PROBS. 334, 337, 349 (2013))."[The youth] may assume that his friends will reject him if he declines to participate—a negative consequence to which he attaches considerable weight in considering alternatives." Scott & Steinberg, *supra*, at 22. Youth generally do not think of ways to extricate themselves, as more mature people might do.

Id. They fail to consider possible options because they lack experience, act quickly, and are unable to project the consequences of their actions. *Id*. Youth tend to favor "the "adventure" of the [crime] and the possibility of getting some money …. These immediate rewards, together with peer approval, weigh more heavily in [the] decision than the (remote) possibility of apprehension by the police." *Id*. This concern about "fitting in" is one of the main reasons why youth are far more likely to participate in group crimes than adults are. Burton, *supra*, at 187. One study found that over half of all violent crimes committed by individuals under the age of 16 involve multiple offenders. *Id.* (citing Franklin E. Zimring, *American Youth Violence* 29 (1998)). The study also found that approximately 51% of the homicides committed by adolescents involve multiple offenders, as compared to only 23% of homicides committed by adults. *Id.* These studies confirm that because young people are particularly susceptible to peer pressure and groupthink, they are more likely than adults to be talked into participating in a felony. As adolescents are more likely to act based on impulses and emotions than rational thinking, they often fail to do a careful assessment of the risks to themselves or others, even when engaging in felonious activities.

3. Adolescents exhibit reduced self-control in affective contexts.

Youth are also more likely than adults to take risks in emotionally charged or exciting situations. *See, e.g.*, Alexandra O. Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 Psych. Sci. 549, 555-59 (2016); Bernd Figner et al., *Affective and Deliberative Processes in Risky Choice: Age Differences in Risk Taking in the Columbia Card Task*, 35 J. Experimental Psych. 709, 710, 725-27 (2009). They further experience reduced self-control "in the presence of [a] threat." Michael Dreyfuss et al., *Teens Impulsively React Rather Than Retreat From Threat*, 36

Developmental Neurosci. 220, 116 (2014). Instead of "retreating or withholding a response to threat cues, adolescents are more likely than adults to impulsively react to them, even when instructed not to respond." *Id.* Loss of self-control persists even when a threat is prolonged. In one study, young adults experienced reduced self-control by performing poorly on tasks "under both brief and prolonged negative emotional arousal relative to slightly older adults, a pattern not observed in neutral or positive situations." Cohen, *supra*, at 559. This behavioral tendency among teens and young adults "was paralleled by their decreased activity in cognitive-control circuitry" of the brain. *Id.* In contrast, heightened activity in the region of the brain that implicates "affective computations and regulation"—or emotion processing—was observed, suggesting that "heightened sensitivity to potential threat" results in "emotional interference and diminished cognitive control" for young adults. *Id.*

Thus, given the unique characteristics of youth, a conviction of murder by accountability more accurately reflects impetuous decision-making, a lack of self-control, and susceptibility to peer pressure than a person who would "kill, intend to kill, or foresee that life will be taken." *Graham*, 560 U.S. at 69.

II. MICHAEL WILSON'S *DE FACTO* LIFE SENTENCE VIOLATES THE MANDATES OF *MILLER*

A. Courts Violate The Mandates Of Miller By Imposing A Life Sentence On A Young Person Who Is Not Principally Responsible For An Offense

While this Court should hold that any life without parole sentence imposed on a young person convicted under an accountability theory is unconstitutional, imposing such a sentence while failing to properly consider youth and its attendant characteristics is particularly problematic. *Miller* mandates that in the "rare" circumstances when courts

impose life without parole sentences, youth receive an individualized sentencing process to consider how "children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." 560 U.S. at 479-80. In particular, courts should consider multiple factors that are relevant to accountability convictions, such as a young person's "immaturity, impetuosity, and failure to appreciate risks and consequences" and "the circumstances of the homicide offense, including the extent of his participation in the conduct." *Id*. at 477-78.

This Court has also underscored the importance of considering the circumstances of an offense before sentencing a young person to spend a lifetime in prison. *Miller*, 202 Ill. 2d at 342-43. In *People v. Miller*, when this Court had the opportunity to carefully analyze a particular incident in which a young person was convicted on a theory of accountability, it held the penalty of natural life imprisonment disproportionate under the Illinois Constitution. *Id.* In reaching its conclusion, this Court noted that the statutorily mandated sentencing scheme prevented considering "the actual facts of the crime, including the defendant's age at the time of the crime or his or her individual level of culpability." *Id.* at 340.

In Michael's case, not only did the sentencing judge fail to adequately consider or discuss the hallmark features of youth, the judge seemed inclined to believe that Michael was the shooter despite evidence that he was not and despite the jury's finding that he did *not* personally discharge the firearm. *Wilson*, 2015 IL App (3d) 130606-U, ¶¶ 32, 49. The sentencing judge stated:

> At that point you could have just let him run. Nothing had happened. But you decided to shoot—you and Byron Moore decided that you're gonna shoot him in the back and leave him for dead and drive off and go talk to your friends and do whatever else you wanted to do and leave him lay in

the street. And I can consider that.

People v. Wilson, 2019 IL App (3d) 160679-U, ¶14.

A sentencing judge who not only fails to consider the distinctive characteristics of youth and how they are particularly applicable to accountability cases, but who appears to mistakenly imply that the defendant is the shooter, clearly fails to properly consider the *Miller* factors and therefore violates the Supreme Court's mandates. Therefore, sentencing a person like Michael—who never personally discharged a weapon—to the harshest possible penalty for a young person is unconstitutionally disproportionate under the Eighth Amendment.

B. The Sentencing Court Failed To Properly Consider Relevant Youth-Centered Factors In Mitigation As Required

Michael Wilson was just 14 years old at the time of the incident that led to his 59-year sentence for first-degree murder and armed robbery. *People v. Wilson*, 2021 IL App (3d) 200181-U, ¶ 5. According to experts, he functioned at a "second-grade level" and had "mild retardation." *Wilson*, 2015 IL App (3d) 130606-U, ¶ 9. Under Illinois law, there was no question that, if his sentence, which was imposed before this Court's decision in *People v. Buffer*, was levied without the required consideration of youth and its attendant characteristics in mitigation, it violated the Eighth Amendment of the U.S. Constitution. *People v. Buffer*, 2019 IL 122327, ¶ 42; *Miller*, 567 U.S. at 479-80; *People v. Holman*, 2017 IL 120655, ¶ 46. Thus, the Third District Appellate Court rightly concluded that the lower court erred in denying Michael Wilson's motion for leave to file a successive postconviction petition based on *Buffer*. *Wilson*, 2021 IL App (3d) 200181-U, ¶ 16. Specifically, the Third District Appellate Court determined that Michael had established the requisite "cause and prejudice" because he could not have raised his claim before the

decisions in *Miller* and *Buffer* and that Michael was prejudiced where the court "did not . . . consider defendant's youth and its attendant characteristics" in imposing a *de facto* life sentence. *Id*.

In its landmark decisions addressing the application of the Eighth Amendment to youthful defendants, this Court wisely held that the advances in neuroscience and social science that undergirded the United States Supreme Court's decisions in *Miller* and *Montgomery* dictate a youth-centered approach to sentencing. *Holman*, 2017 IL 120665, ¶¶ 41-46. Guided by the United States Supreme Court—but informed by its own analysis and understanding of the constitutional principles embedded in those decisions—this Court forged a path toward a scientifically-based, reasoned, and compassionate approach to sentencing youth who commit even the most serious of offenses. Nothing the United States Supreme Court held in *Jones v. Mississippi,* nor any decision by this Court, requires a different approach. This Court should not and need not accept the State's invitation to upend its precedent. Rather, this Court can and should determine how best to ensure that *Miller's* protections are fully effectuated in this state. *Danforth v. Minnesota*, 552 U.S. 264, 266 (2008).

The State incorrectly relies on *Jones v. Mississippi* to ask that this Court uproot its recent jurisprudence regarding life and *de facto* life sentences imposed on youth. (Appellate Ct. Pet. for Reh'g at 1-4; Br. & App. of Resp't-Appellant People of the State of Ill. at 25-30). But *Jones* does not require or even encourage such an approach. First, as *Jones* repeatedly made clear, *Miller* and *Montgomery* remain the law of the land. *Jones v. Mississippi*, 141 S. Ct. 1307, 1321 (2021). While the *Jones* Court rejected the notion that, under *Miller*, a separate factual finding of permanent incorrigibility was required to impose

a life sentence on a youth, it plainly left intact *Miller*'s requirement that a sentencer "consider youth as a mitigating factor when deciding whether to impose a life-without-parole sentence," which was precisely what the Third District Appellate Court ordered here. *Jones*, 141 S. Ct. at 1316; *Wilson*, 2021 IL App (3d) 200181-U at ¶ 16 ("Therefore, we vacate defendant's sentence and remand for a new sentencing hearing with directions that the court consider defendant's youth and its attendant characteristics."). Second, *Jones* further affirmed that *Miller* required "[a] hearing where youth and its attendant characteristics are considered as sentencing factors," in order to "separate those juvenile offenders who may be sentenced to life without parole from those who may not," or those whose conduct might have been the product of "transient immaturity." *Jones*, 141 S. Ct. at 1317-18 (quoting *Montgomery v. Louisiana*, 577 U.S. 190, 209-10 (2016)). In other words, while *Jones* made clear that a separate factual finding of "incorrigibility" was not required, it did not eliminate the requirement that a sentencer consider youth and its attendant factors in mitigation before condemning a child to spend the rest of his or her life in prison. Such a requirement was necessary to ensure that a child whose conduct was the product of transient immaturity would not receive a life sentence.

This Court's decisions have faithfully adhered to *Miller*'s requirements, while exercising a near-prescient analysis with respect to *Miller*'s application to the cases before it. In *People v. Davis*, two years before the decision in *Montgomery v. Louisiana*, this Court unanimously and correctly determined that *Miller* applies retroactively. *Davis*, 2014 IL 115595, ¶ 34. In *Holman*, although this Court acknowledged that some states had limited *Miller*'s application *solely* to *mandatory* life sentences, this Court adopted an approach whereby the trial court "must consider some variant of the *Miller* factors before imposing

a life sentence without the possibility of parole." *Holman*, 2017 IL 120665, ¶ 43-44 (citing *People v. Gutierrez*, 324 P. 3d 245,269 (Cal. 2014)). This Court reasoned that such an approach was not only consistent with its decision in *People v. Reyes*, where it referred to the characteristics listed in *Miller* as "mitigating factors," *People v. Reyes*, 2016 IL 119271, ¶ 3, it was also consistent with its earlier case law, *Holman*, 2017 IL 120665, ¶ 44. As the Court put it, "[w]e have long held that age is not just a chronological fact but a multifaceted set of attributes that carry constitutional significance." *Id.* at ¶ 44 (citing *People v. McWilliams*, 348 Ill. 333, 336 (1932) and *Miller*, 202 Ill. 2d at 341)). This Court also concluded that such an approach was consistent with Illinois sentencing statutes, particularly 730 ILCS 5-4.5-105, which codified the *Miller* factors. *Id.* at ¶ 45. While the *Holman* Court established that a youth may be sentenced to life without parole only if the trial court "determines that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation" and after consideration in mitigation of "youth and its attendant characteristics," *id.* at ¶ 46, this Court has subsequently clarified—even before the United States Supreme Court's opinion in *Jones*—that no "magic words" and no specific findings are required to make such a determination, *People v. Lusby*, 2020 IL 124046, ¶¶ 31, 34-36. Rather, the trial court must make an "informed decision based on the totality of the circumstances that defendant was incorrigible and a life sentence was appropriate." *Id.* at ¶ 35.

Collectively, these decisions recognized that even before the *Jones* decision, the Eighth Amendment required no specific finding of incorrigibility nor any "magic" words but did require a holistic approach that accounted for youth-centered factors in mitigation before imposing a life or *de facto* life sentence. *Jones* did nothing to alter that legal

landscape. Nor should it. *Jones'* deference to state-created rules and policies is clear, as the *Jones* Court invited states to go beyond the specific, narrow contours of its ruling: "Importantly, like *Miller* and *Montgomery*, our holding today does not preclude the States from imposing additional sentencing limits in cases involving defendants under 18 convicted of murder." *Jones*, 141 S. Ct. at 1323. The Court further explained that states could categorically prohibit juvenile life without parole or require sentencers to make extra factual findings before sentencing a child to life without parole and formally explain on the record why a "life-without-parole sentence is appropriate notwithstanding the defendant's youth." *Id*. "States may also establish rigorous proportionality or other substantive appellate review of life-without-parole sentences. All of those options, and others, remain available to the States." *Id*.

Even in its decision in *Montgomery v. Louisiana*, the U.S. Supreme Court was clear that, while *Miller* had delineated a substantive change in the law pertaining to youth facing and serving life sentences, its procedural components were left to the states. *Montgomery*, 577 U.S. at 211. As the Court explained, "[w]hen a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement *to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems*." *Id*. (emphasis added) ("[W]e leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences." (quoting *Ford v. Wainwright*, 477 U.S. 399, 416-17 (1986) (alterations in original))). The U.S. Supreme Court earlier affirmed this license to states to determine their own procedural requirements to effectuate federal constitutional rights. *Danforth v. Minnesota*, 552 U.S. 264, 280 (2008). Indeed,

> [t]he fundamental interest in federalism that allows individual States to define crimes, punishments, rules of evidence, and rules of criminal and civil procedure in a variety of different ways—so long as they do not violate the Federal Constitution—is not otherwise limited by any general, undefined federal interest in uniformity.

Id. Therefore, "the remedy a state court chooses to provide its citizens for violations of the Federal Constitution is primarily a question of state law." *Id*. at 288 ("Federal law simply 'sets certain minimum requirements that States must meet but may exceed in providing appropriate relief.'" (quoting *American Trucking Ass'ns., Inc. v. Smith*, 496 U.S. 167, 178-79 (1990) (plurality opinion))).

As long as this Court adheres to *Miller*'s substantive, constitutional requirements, it may prescribe procedures that ensure that the constitutional requirement is met. This Court may even provide greater relief than what is required in its own courts of collateral review. *Montgomery*, 577 U.S. at 199-200. However, in this case, the appellate court did nothing more than order relief that is fully supported by *Miller*: it remanded the matter for a resentencing hearing and instructed the lower court to consider the defendant's youth and its attendant characteristics. As such, the appellate court's decision should be upheld.

CONCLUSION

For the foregoing reasons, we urge this Court to affirm the decision of the Third District Appellate Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 19 pages.

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